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DIGEST OF TENNESSEE WATER POLLUTION CONTROL LEGISLATION

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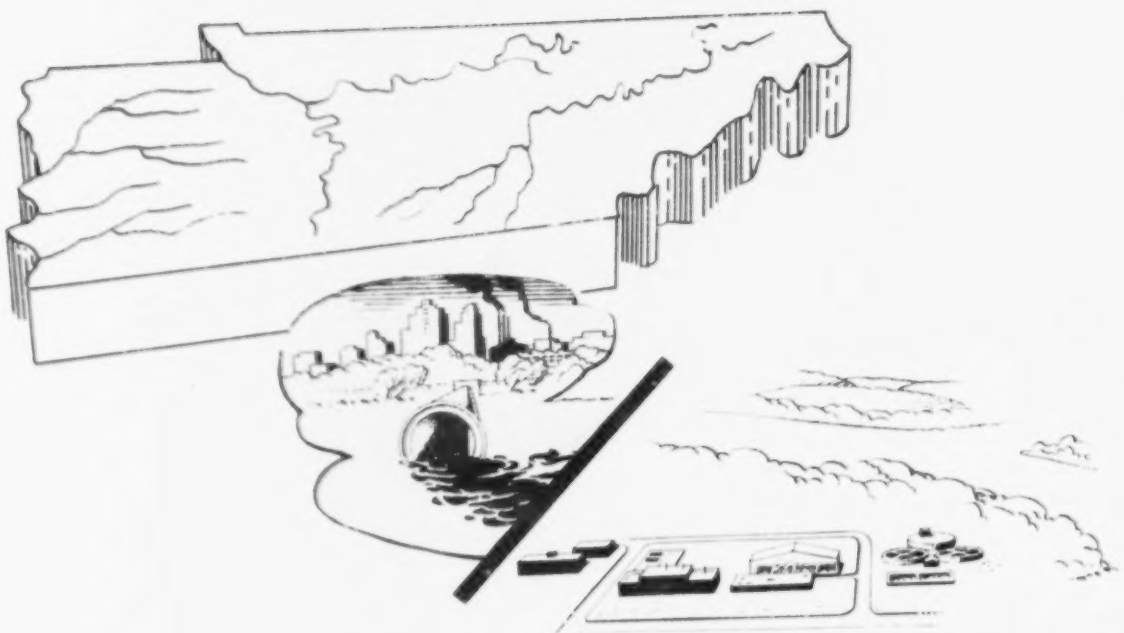

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

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DIGEST OF TENNESSEE WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The Stream Pollution Control Board is charged with the primary responsibility of controlling water pollution (Sec. 70-303).[1/]

The Department of Public Health also exercises some functions relating to water pollution. These relate primarily to supervision of the construction of public water supply and public sewerage systems (Secs. 53-2001-2008; 1957 Cum. Supp., Secs. 53-2009-2016).

The Governor is authorized to have the State Department of Public Health, through the Division of Sanitary Engineering and other agencies make such surveys as will bring about the correction of the pollution of the streams of the State having their sources in other States.

The Governor is further authorized to enter into negotiations with the authorities of adjacent States and bring about cooperative action looking to the prevention and control of the pollution of said streams. Such suits as may be necessary to prevent and control the pollution of said streams can be instituted and prosecuted in any court of the United States having jurisdiction, for the purpose of preventing and controlling the pollution of said streams. To that end, the Attorney General is authorized to bring such suits when necessity therefor has been shown by those clothed with the power of investigation listed in Section 70-320 (70-320-322).

1/ Citations in this digest refer to the Tennessee Code Annotated (official edition), and the 1957 Cumulative Supplement thereto, unless otherwise noted.

II. ADMINISTRATIVE ORGANIZATION

Stream Pollution Control Board

1. Composition and organization

The Board consists of the Commissioner of the Department of Public Health, who is Chairman, the Commissioner of the Department of Conservation, the Executive Director of the Tennessee State Planning Commission, and four members appointed by the Governor, two representing manufacturing industries and two representing municipalities having a publicly-owned water supply. Appointive members serve for four-year terms except those first appointed. The Chief Sanitary Engineer of the Department of Public Health serves as Technical Secretary. Regular meetings are held in May and November of each year and special meetings may be held at any time and place determined by the Board or upon call of the Chairman or upon written request of two members. Four members of the Board constitute a quorum. General orders, policies, or regulations adopted by the Board to have general effect in part or all of the State must be filed with the Secretary of State at least 30 days before they are to take effect. Special orders need not be filed with the Secretary of State, but the person to whom they are directed must be legally notified thereof. The State Department of Public Health acts as the administrative agent of the Board, and makes inspections and conducts such investigations as may be necessary to carry out the provisions of the Act. The Department exercises all the powers conferred on the Board, subject to the general direction of the Board and its rules and regulations, except that of establishing general policies and standards of permissible degree of pollution and the promulgation

of the general or special orders, rules and regulations. (Sec. 70-302).

2. Powers and duties

a) Setting pollution standards

The Board is authorized to establish standards of quality for the various waters of the State, and also general policies relating to permissible pollution in any of the State waters. The establishment of standards and policies must be made after public hearings preceded by notice thereof (Sec. 70-304).

b) Issuance of permits and review of plans and specifications

The Board is empowered to examine plans, specifications and other data and to issue permits for the discharge of sewage, industrial wastes and other wastes into the waters of the State, stipulating in the permit the conditions under which such discharge may be permitted (Sec. 70-305).

c) Enforcement

The Board may issue special orders directing persons responsible for pollution to do the following:

1. Conduct investigations and research in order to discover means for controlling pollution,

2. Submit, for the approval of the Board, plans and specifications for facilities for controlling pollution, and

3. Secure such operating results toward the control of pollution as the Boerd may prescribe (Sec. 70-306).

Before the issuance of special orders, the Technical Secretary gives written notice to the person responsible for pollution, setting forth the causes of pollution and requiring that the person responsible

appear at the time and place specified in the notice and answer the charges. At least 20 days' notice of such hearing is required (Sec. 70-307). When the Board, after investigation, is of the opinion that any person is responsible for pollution, and four or more members certify that such pollution constitutes great danger to public health, and that it appears to be prejudicial to the interests of the general public to delay action for the period of 20 days, the Board may immediately issue peremptory orders requiring such operating results toward the control of pollution as it may prescribe. Each special notice, whether issued upon notice and hearing or otherwise, must be served by registered mail, and must state generally the nature of the conditions to be remedied, suggesting such methods as may be practicable and available for complying with the order (Sec. 70-308).

The person on whom a special order is served has the right, upon request, to have a hearing thereon before the Board. Such request must be made within 30 days from the date of service of such order. In the absence of a request for such hearing, the order becomes final after 30 days from the date of service thereof. After such hearing, the Board is empowered to make such amended order as appears warranted by the evidence, together with such personal inspection of the premises as it may deem necessary to make. A copy of each such amended order must be served by registered mail upon the person affected thereby and must specify the dates by which the required action must be commenced and/or completed (Sec. 70-309).

Failing compliance with any final special order, the Board may file an action in the Chancery Court of Davidson County, which court has exclusive jurisdiction of such suits, to compel compliance. The

Court hears the case without a jury. Upon such hearing, any order made by the Board after a hearing is prima facie correct, but either party may introduce testimony bearing upon the reasonableness of such order, and the Court may affirm, modify or annul said order of the Board. No hearing is allowed by the Court as to a special order which has become final by failure to request a hearing thereon, but the same must be enforced as a matter of right, except that the Court has the power to fix a new date for the beginning and completion of the matters required to be complied with. Appeals from the judgments of the Chancery Court may be made to the State Supreme Court (Sec. 70-310).

Special orders by the Board for corrective measures by a municipality or other public governmental body are not effective if such municipality or governmental body files an affidavit alleging that it is without funds or means to obtain such funds. However, after such an affidavit has been filed, the Board may call upon the State Funding Board for a determination of whether or not such municipality or other public governmental body is actually without the means to borrow the necessary funds for the corrective works at a current reasonable rate of interest (Sec. 70-311).

It is unlawful for anyone to cause pollution of any State waters contrary to any special order adopted by the Board, which has become final under the provisions of the Act, or to fail or refuse to furnish information, plans, specifications, or other data required by the Board (Sec. 70-316).

Anyone violating or failing to comply with any special order of the Board, or of a Court, is liable to a fine of not less than $50.00, nor more

than $500.00 for each violation. Each day the violation continues after conviction may constitute a separate offense, and the system, business or establishment causing pollution may be shut down as a nuisance (Sec. 70-317).

d) Conduct of studies, investigations and research

The Board is authorized to study and investigate all problems concerned with the pollution of State waters and with its prevention, abatement and control, and to make reports and recommendations thereon; to conduct scientific experiments, investigations and research to discover economical and practicable methods for preventing pollution; to make investigations and inspections to insure compliance with any general or special orders, rules or regulations which it may issue or adopt, and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance; to conduct surveys with respect to the pollution of any streams in the State either navigable or not navigable; to determine suitable locations for lakes for the propagation of fish, soil conservation, water conservation, and recreation, and to recommend from time to time such sites as are found acceptable for these purposes (Sec. 70-303).

e) Cooperation with other public and private agencies

The Board is empowered to cooperate with any public or private agency in the conduct of its experiments, investigations and research, and it may receive on behalf of the State any moneys which any such agency may contribute as its share of the cost under any such cooperative arrangement (Sec. 70-303(c)).

The Board is authorized to enter into agreements with the responsible authorities of other States, subject to approval by the Governor, relative

to policies, methods, means and procedures to be employed to control pollution of any interstate waters and to carry out such agreements by appropriate general and special orders. This power, however, does not extend to the modification of any agreement with any other State concluded by direct legislative act. Unless otherwise expressly provided, the Board is the agency for the administration and enforcement of any such legislative agreement (Sec. 70-313).

f) Administrative powers

The Board is empowered to hold hearings; issue orders and permits; adopt rules and regulations. Any members or agent of the Board may enter any property, or establishment at any reasonable time for the purpose of collecting information, and no one is permitted to refuse to admit such member or representative for all purposes necessary to the discharge of his official duty. The Board is further authorized to administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of necessary and essential data (Secs. 70-303(e), 305, 308, 309, 315).

3. Preservation of existing rights and remedies

The Act is intended to supplement other provisions of the State Code and no part of the Act is to be construed to repeal any provisions of the Code specifically enacted for the protection of health or the protection of fish and game of the State, except that the administration of any such laws pertaining to the pollution of waters as defined in the Act must be in accord with the general policies and regulations adopted by the Board (Sec. 70-318).

4. Severability clause

The Act contains a severability clause (Public Acts of Tenn., 1945, Ch. 128, sec. 10).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is a misdemeanor to throw the dead body of an animal in any spring, well, cistern, or running stream of water (Sec. 39-2204).

Anyone who pollutes or contaminates the water of any waterworks supplying water for domestic or manufacturing purposes is guilty of a misdemeanor (Secs. 39-2205, 39-2206).

It is unlawful and a misdemeanor for anyone to dispose of water carrying human, household, or business waste, or to pipe or transmit raw sewage or the effluent from any septic tank or other sewer system of any type, into any abondoned well, cave, sink hole, open ditch or any well drilled or dug for the purpose of disposing of sewage (1957 Cum. Supp., Secs. 39-2209, 39-2211).

It is a nuisance to render impure the water of any river, stream or pond (Sec. 39-2904). Nuisances are considered as misdemeanors and the court may cause them to be abated at the defendant's expense (Sec. 39-2905).

It is a misdemeanor to carry on any business in such a manner as to injure or pollute the water of any stream from which water is taken by means of waterworks to supply any town or city of the State. Violators of this section may be fined at the discretion of the jury, and the Court can order the abatement of the nuisance. Each day the violation continues is a separate offense. In addition, the violator may be civilly liable for damages to injured parties (Secs. 39-2906, 39-2907).

The dumping of junk or other refuse into a river, creek or stream is a misdemeanor (Sec. 39-4503).

It is unlawful for anyone to willfully corrupt or permit anything to run or fall into any stream or reservoir from which a water company takes water for the purpose of supplying any municipality (Sec. 65-2709).

It is unlawful for anyone to use dynamite, electricity, explosives, chemicals, lime or poison to kill or stun fish. However, this section does not apply to the Director of Game and Fish or his designated agents to use such items when necessary to remove or eradicate undesirable species of fish (Sec. 51-438).

No one is permitted to throw or allow to run any dyestuffs, coal, tar, sawdust, lime or any deleterious or poisonous substances into any waters, either private or public, in quantities injurious to fish life. Violation is a misdemeanor. Each day the violation continues is a separate offense, and seven days' continuous violation constitutes a public nuisance subject to abatement by permanent injunction (Sec. 51-511).

It is unlawful for anyone to put sawdust, decayed animal matter, fish, offal, human feces, poisonous and other deleterious matter into the waters of Reelfoot Lake, or to permit the sewage from dwellings, cuthouses, etc. to be run into it. Violation of this section is a misdemeanor (Sec. 51-512).

IV. INTERSTATE COMPACTS

The Governor is authorized to enter into the Ohio Valley Sanitation Compact, on condition, however, that the States of North Carolina and Alabama, first enter into such compact, which States lie upstream from all or part of the State of Tennessee upon the Tennessee River and its tributaries (Sec. 70-401).

Tennessee is a party to the Tennessee River Basin Water Pollution Control Compact (1957 Cum. Supp., Secs. 70-1901-1907).